

APPEAL NO. 041816
FILED SEPTEMBER 2, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 28, 2004. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that she did not timely report her alleged injury to her employer in accordance with Section 409.001, thus, the respondent (carrier) would be relieved from liability pursuant to Section 409.002, if the claimant had sustained a compensable injury; and that the claimant did not have disability. In her appeal, the claimant challenges each of those determinations as being against the great weight of the evidence. In its response to the claimant's appeal, the carrier urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____, and that she did not timely report her alleged injury to her employer. The claimant had the burden of proof on those issues. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The injury and notice issues presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n. v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In this instance, the hearing officer determined that the evidence did not establish that the claimant sustained a compensable injury or that she reported her alleged injury to the employer within the 30-day period provided in Section 409.001 for doing so. The hearing officer simply was not persuaded that the claimant sustained her burden of proof on either issue. The hearing officer was acting within his province as the fact finder in so finding. Nothing in our review of the record demonstrates that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse the injury or notice determinations on appeal. Pool, *supra*; Cain, *supra*.

The existence of a compensable injury is a prerequisite to finding disability. Section 401.011(16). Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she did not have disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **BANKERS STANDARD INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Margaret L. Turner
Appeals Judge